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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1940.

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No. 383.

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UNITED STATES HOFFMAN MACHINERY CORPORATION,  
*Petitioner,*

v.

CUMMINGS-LANDAU LAUNDRY MACHINERY COMPANY, INC.,  
*Respondent.*

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**BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.**

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CLARENCE B. DES JARDINS,  
*Counsel for Respondent.*

September 17, 1940.

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**Opinions of the Courts Below.**

The decision, which petitioner seeks to bring up for review, is one by the United States Circuit Court of Appeals for the Second Circuit, in an ordinary patent suit, which adjudged the only claim of Krantz patent, No. 1,723,940, to be void for want of invention. This decision (R. 574-577) is reported in 113 F. (2d) 424. It reversed a decision of the United States District Court for the Eastern District of New York (R. 545-562) reported in 30 Fed. Sup. 448.

### **Jurisdiction.**

The jurisdiction of this Court is invoked by petitioner under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925, U. S. C. Title 28, Section 347(a).

### **Statement of the Case.**

The complaint (R. 2) was filed on March 31, 1937, and charged respondent with infringement of United States Letters Patent of Krantz, No. 1,723,940. After trial, the District Court rendered an opinion (R. 545) holding the patent valid and infringed and entered a decree (R. 563) for petitioner. On appeal to the Circuit Court of Appeals, an opinion (R. 574) was rendered on July 15, 1940, reversing the judgment of the District Court and holding the patent void for want of invention. A petition for rehearing (R. 577) filed July 26, 1940, was denied (R. 583) on July 31st.

The Krantz patent in suit (R. 299) is for a centrifugal machine and relates "to a machine adapted for the drying of clothes, textile materials, or other articles, by the action of centrifugal force, the articles to be dried being placed in a whirling basket so that the moisture is driven out therefrom by the centrifugal force generated by the rotation of the basket". The patent in suit purports to cover certain improvements upon that old type of centrifugal machine which comprised a casing, in which a vertical basket shaft was journaled on bearings carried by the casing, a basket having a perforated wall being fastened to the upper end of the basket shaft so that it was revolved rapidly within the casing when the basket shaft was driven by a suitable motor. The clothes, or other material to be dried, were placed in the basket and centrifugal force drove the water from the material out through the perforations in the basket into the casing, from which it was drawn off. It was practically impossible to load material into the basket so that the weight would be distrib-

uted symmetrically about the axis of rotation, and it had long been known that this uneven loading resulted in excessive vibrations, when the basket was rotated at high speeds. This difficulty was cured, years ago, by suspending the casing from three or more links, the lower ends of which had ball joint connections with lugs on the casing, while the upper ends had similar joints connecting them with stationary brackets arranged around the casing. The single claim of the patent in suit purports to cover a machine, such as we have described, improved in three particulars, to wit: (1) The upper basket shaft bearing is located in the horizontal plane of the center of gravity of the basket and load. (2) The upper link bearings, that is, the ball joints at the upper ends of the links, are located in the same horizontal plane. (3) The basket shaft is driven by a motor mounted on the lower portion of the suspended casing.

The Circuit Court of Appeals found (R. 575) that the first feature clearly had been anticipated by Bryson patent, No. 1,311,871 (R. 399). It found, further (R. 576), that the third feature was likewise old. As to the second feature, it found (R. 576) that there were instances in the prior art in which the upper ends of the links were approximately in the plane of gravity of the load, although nobody had ever prescribed such relationship. The opinion then continues, as follows (R. 576):

“Krantz declared that it produced ‘a more efficient dampening effect’ (p. 2, ll. 102, 103); but upon this record it is extremely doubtful that it does anything of the sort. Ray, the defendant’s expert, said that the only important factor in ‘dampening’ was the length of the ‘links’, and while it would perhaps be unfair to say that Locke, the plaintiff’s expert, actually committed himself, he seemed to agree; at least he admitted on cross-examination that it was the optimum length of the ‘links’ that was the controlling factor. There is, however, an advantage in having the tops of the links as low as possible; they are then out of the way of the basket, and the rigid brackets can be shorter.

And on the other hand, there is an advantage in not having them too low, for that would require lowering the lugs below the bottom of the 'curb'. Neither of these was Krantz's purpose and, indeed, when he filed his application he had no idea of including this feature in his patents at all. None of his seven claims contained it; and it was only after the examiner had rejected them all on Bryson that his solicitor introduced it and that too without any oath. It appears to be rather his invention than Krantz's. We are therefore disposed to believe that there is no substance in this detail at all, but even if there is, the patent cannot rest upon it. If Krantz really did add to the 'dampening effect', nobody has been able to verify it; all that we know is that, when the 'links' are of proper length, they give good results if put in the prescribed position. But so they do in any position. The discovery, if there was indeed a discovery, was empirical in any event, and its importance does not justify imposing upon competitors the handicap of designing their machines so as to be deliberately inconvenient. A patent is given in consideration of some benefit to the art, and any benefit is here too contingent to serve."

Having shown that the patent could not be sustained, because of any one of the features, individually considered, the Circuit Court of Appeals addressed itself to the question whether the presence of the three features, in a single machine, was sufficient to sustain the patent and reached the conclusion that it was not, saying (R. 577):

"It is enough here that the combination of three factors—two of them familiar to the art, and the third of no proved value—was a matter of convenience not beyond the powers of the ordinary designer. The patent has had some success, but it comes to no more than putting the motor into Bryson's 'curb' and the 'links' in their obviously most convenient position. Such permutations ought to remain open to the art at large; it requires no exceptional talent to call them forth."

### **Summary of Argument.**

1. The questions of law submitted by the petitioner, and which it asks the Court to pass upon, were not presented in, or decided by, the Circuit Court of Appeals.

2. The decision of the Circuit Court of Appeals turned entirely upon a question of fact, lack of invention, and there is no conflict between circuits on this question of fact.

### **I.**

**The questions of law submitted by the petitioner, and which it asks the Court to pass upon, were not presented in or decided by the Circuit Court of Appeals.**

Petitioner has submitted the following questions of law:

(1) Is the burden upon a plaintiff to prove utility of the structure claimed in a patent sued upon?

(2) Is a defendant who sells a copy of the patented machine estopped to deny utility?

Neither of these questions was considered or decided by the Circuit Court of Appeals. There was no contention that the patented machine, in its entirety, was lacking in utility. The plaintiff's machines, as well as defendant's, are useful. Petitioner was not required to prove the utility of its patented machine. Such utility was admitted. There was no question as to whether defendant could deny the utility. There was a question of fact, as to whether the location of the upper link bearings, specified in the patent, contributed anything to the utility of the machine, and that question was decided against petitioner, in the light of expert testimony which was not in conflict (R. 576). Accordingly, we submit that the questions stated by petitioner did not arise in the trial or decision of the case below, and that no questions of law were decided by the Circuit Court of Appeals, in this case, contrary to established principles or rules of law.

## II.

**The decision of the Circuit Court of Appeals turned entirely upon a question of fact, lack of invention, and there is no conflict between circuits on this question of fact.**

It is apparent from the decision of the Circuit Court of Appeals that the only question decided by it was one of fact, that is, whether the improvement required merely mechanical skill or the exercise of the faculty of invention. The Court has held in *Thomson Co. v. Ford Motor Co.*, 265 U. S. 445, 44 S. Ct. 533, that that is a question of fact. The Court held in *Layne & Bowler Corp. v. Western Well Works*, 261 U. S. 387, 43 S. Ct. 422, that the writ of certiorari should not be granted "except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal." And in *Keller v. Adams-Campbell Co.*, 264 U. S. 314, 44 S. Ct. 356, the Court held:

"Such an ordinary patent case with the usual issues of invention, breadth of claims and non-infringement, this Court will not bring here by certiorari unless it be necessary to reconcile decisions of Circuit Courts of Appeal on the same patent."

There is nothing in the decision of the Circuit Court of Appeals, in the present case, which requires that it be reviewed by the Court in the public interest, or to reconcile conflicting decisions of Circuit Courts of Appeal on the same patent.

**Conclusion.**

**The petition for a writ of certiorari should be denied.**

Respectfully submitted,

CLARENCE B. DES JARDINS,  
*Counsel for Respondent.*

September 17, 1940.